

Marketers Beware - Unsolicited Text Messages Can Be An Expensive Mistake

June 16, 2020 - When companies market their goods, they look for ways to make sure that people read the messages that they put out. Many years ago, the way they reached their audiences was through newspapers and magazines. Then came radio and TV spots. By the 1970's, telemarketing was all the rage. And in the 1990's email and internet advertising took off. The real difference between the older methods of advertising and those that came into play in the 1970's was passivity. Traditional advertising (print, radio, etc) was passive. Consumers who didn't want to look at ads, didn't have to. But telemarketing is intrusive, email advertising can make your inbox almost unmanageable and internet advertisers learned that by tracking what you did online they could have their ads follow you around from site to site in a very creepy way. Rightfully so, consumers felt that their privacy was being invaded. Inevitably, that led to new regulations which impact even more forms of advertising today, including text messages.

Tweet

```
(function() {
var s = document.createElement('SCRIPT'), s1 = document.getElementsByTagName('SCRIPT')[0];
s.type = 'text/javascript';
s.src = 'http://widgets.digg.com/buttons.js';
s1.parentNode.insertBefore(s, s1);
})();
```

```
(function() {
var po = document.createElement('script'); po.type = 'text/javascript'; po.async = true;
po.src = 'https://apis.google.com/js/plusone.js';
var s = document.getElementsByTagName('script')[0]; s.parentNode.insertBefore(po, s);
})();
```

By 1991, many consumers had had enough of telemarketers. That's when the TCPA (Telephone Consumer Privacy Act) was passed into law. It radically changed the way that marketers had to work. Among other things, it set specific hours that telemarketers had to avoid and it established the Do Not Call Registry which allows all consumers to opt out of receiving telemarketing calls. While the registry is often ignored today, it still has consequences. Fed up consumers have the ability to sue telemarketers who ignore it, and they often win those suits to the tune of thousands of dollars.

Over the years, congress has amended the TCPA to include more than just calls. And the courts have also gotten involved. It now includes junk fax messages as well as unsolicited text messages.

Marketers love texting. To understand why, all you need to do is look at the numbers. Click through rates for online advertising - meaning the number of clicks an ad gets - have dropped dramatically over the years. 1% click through rates are considered good. Unsolicited email is even worse. But text messages are another story entirely. Virtually everyone reads all of their text messages, so marketers can be assured that their message is getting viewed. Consequently, there is a great temptation to send out bulk messages via text. The fact that you don't have to be a sophisticated advertiser, or purchase a lot of equipment only adds to the temptation. In fact, if you know what you are doing, just about anyone can send individual text messages in bulk right from their own phone. It's simple and inexpensive - that is, unless you get hit with a lawsuit.

Under TCPA, bulk texting requires the permission of the person receiving the text messages. That permission can come in a couple of forms. Written permission - in which the person actually signs a form stating that they want you to send them texts. Or opt-in permission via text. In most cases that means getting the recipient to send you a text message giving you permission to send them texts. Note to marketers. If you use the opt-in via text, make sure you save the text

messages giving you permission to send texts. You'll need them if you get sued.

Verbal permission isn't legal and it won't protect you. And the damages for sending bulk texts can be significant. \$1,500 per unsolicited message. A small class action suit over 1000 messages could result in a bill of \$1,500,000, and that isn't including attorney's fees.

These kinds of lawsuits are on the rise. Consumers absolutely had unsolicited text messages. They feel like a privacy violation and a waste of time. Given the fact that some marketers send out tens of thousands of messages at a time, the trend towards lawsuits is likely to continue. The amount of money that attorneys can make in such a suit is just too much for them to go away. And finding upset consumers to play the role of plaintiff in these suits isn't difficult.

Anyone considering using bulk text messaging for marketing purposes, needs to make sure they are doing it the correct way. There is nothing wrong with it, and for those who doing it correctly the rewards can be great. But for anyone who does it the wrong way, it can be a very costly mistake.

by Jim Malmberg

Note: When posting a comment, please sign-in first if you want a response. If you are not registered, [click here](#). Registration is easy and free.

Follow ACCESS